

JUSTIFICATION AND APPROVAL
FOR AN EXCEPTION TO FAIR OPPORTUNITY

1. Contracting Activity: Department of Veterans Affairs (VA)
Office of Acquisition Operations
Technology Acquisition Center-Austin
1701 Directors Blvd. Suite 600
Austin, TX. 78744
2. Description of Action: The proposed action is for a firm-fixed-price task order (TO) issued under the National Aeronautics and Space Administration (NASA), Solutions for Enterprise-Wide Procurement (SEWP) IV, Government-Wide Acquisition Contract (GWAC), to procure maintenance and warranty on hardware and software supporting Network Application (NetApp) storage arrays. This effort is for 12 months with four 12-month options.
3. Description of Supplies or Services: VA Office of Information and Technology (OIT), Region 2, currently houses existing NetApp storage arrays in approximately 37 VA hospitals, leased spaces, community-based outpatient clinics, and 22 virtual entities in the United States from Wisconsin to Texas. These arrays store critical patient and daily operations data. The hardware and software for the existing NetApp storage arrays require maintenance and warranty in order to keep these critical devices operational 24x7. VA seeks to procure NetApp Support Edge Premium 24x7, 4-hour storage array support services for these NetApp storage devices inclusive of hardware, software, and remote technical support services. Also, VA requires immediate high priority replacement of defective equipment with shipment to the designated location within 24 hours of notification. The total estimated value of the proposed action, inclusive of the option periods, is \$812,132.08.
4. Statutory Authority: The statutory authority permitting an exception to fair opportunity is Section 41 U.S.C. 4106(c) as implemented by the Federal Acquisition Regulation (FAR) Subpart 16.505(b)(2)(i)(B), entitled, "Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized."
5. Rationale Supporting Use of Authority Cited Above: Based on extensive market research, as described in Paragraph 8 of this document, it was determined that limited competition is available among authorized resellers for the brand name service. This is a brand name justification in support of FAR 11.105, Items Peculiar to One Manufacturer. The hardware and software already in place for the Region 2 storage infrastructure is the NetApp storage array solution. No other brand name hardware and software will be interoperable or compatible with the currently fielded NetApp storage array devices. Specifically, the current system and software communicates through a proprietary source code that is based on NetApp storage array proprietary data. If another system's maintenance and warranty is put in place other than NetApp storage array, additional risk would be incurred as any alternate system maintenance/warranty

would not be based on access to proprietary NetApp storage array hardware and software. Furthermore, this proprietary data allows a source access to the fundamental elements of the NetApp storage array that is essential in providing maintenance and warranty. Finally, only NetApp devices can accommodate NetApp replacement parts; and, therefore, only authorized NetApp resellers can meet this requirement.

6. Efforts to Obtain Competition: Market research was conducted, details of which are in the market research section of this document. Although the Government is limiting competition as a result of specifying unique or highly specialized services, there are multiple authorized NetApp storage array warranty and maintenance resellers on the NASA SEWP IV GWAC. In accordance with FAR 5.301 and 16.505(b)(2), this action will be synopsisized at award on the Federal Business Opportunities Page and the justification will be made publicly available.

7. Actions to Increase Competition: The Government will continue to conduct market research to ascertain if there are changes in the market place that would enable future actions to be competed.

8. Market Research: The Government's technical experts from OIT have reviewed other similar service support products since January 2012 and determined that no other service support products can meet the Government's requirements. By selecting a product other than NetApp storage array, VA would not be able to ensure compatibility of the service support or technical support from trained NetApp storage array technicians. Based on all the market research efforts, the Government's technical experts have determined that only NetApp storage array support services can meet all of VA's needs for the proposed action. Additionally, a request for information was posted in May 2012 to the NASA SEWP IV GWAC, which resulted in multiple responses from resellers. Therefore, limited competition among authorized resellers is anticipated.

9. Other Facts: None.

10. Technical and Requirements Certification: I certify that the supporting data under my cognizance, which are included in this justification, are accurate and complete to the best of my knowledge and belief.

Austin Pope

Date: 9/21/2012

Program Management

Signature: 

Digitally signed by Austin P Pope 188150
DN: dc=gov, dc=va, o=internal, ou=people,
ou=2342, 1.2.840.100.1.1=austin.pope@va.g
ov, cn=Austin P Pope 188150
Date: 2012.09.21 13:53:26 -0500

11. Fair and Reasonable Cost Determination: I hereby determine that the anticipated price to the Government for this contract will be fair and reasonable. The contract prices on SEWP have already been determined fair and reasonable and further price competition is anticipated.

Marc Cypert

Date: 9/21/2012

Procuring Contracting Officer

Signature: 

12. Procuring Contracting Officer Certification: I certify that this justification is accurate and complete to the best of my knowledge and belief.

Marc Cypert

Date: 9/21/2012

Procuring Contracting Officer

Signature: 

13. Legal Sufficiency Certification: I have reviewed this justification and find it adequate to support an exception to fair opportunity and deem it legally sufficient.

Name:

Date: 9-21-2012

Legal Counsel

Signature: 

Approval

In my role as the Contracting Activity Competition Advocate and based on the foregoing justification, I hereby approve the acquisition of Network Application storage array support services, as an exception to fair opportunity pursuant to the authority cited in paragraph 4 above, subject to availability of funds, and provided that the services herein described have otherwise been authorized for acquisition.

Date: _____ Signature: _____

Iris B. Cooper
Head of the Contracting Activity